



**A can of worms and valuation - by John Rynne**

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On July 8th I saw a newspaper article by an Associated Press reporter, Michael Sisak headlined "Trump appraiser held in contempt in civil probe." This really grabbed my attention. Apparently the

appraisal company has been slow in responding in turning over to the New York attorney general's office, hundreds of thousands of pages of documents and over 650 appraisals since the last subpoena was issued in February 2022. According to the article, the appraisal company spent over \$500,000 on storing duplicates of these documents. I assume not only the final reports were being subpoenaed but also the 650 work files. This would be a logistical nightmare for any appraisal company. The attorney general thinks they may have uncovered evidence of misstating asset values. It's possible the attorney general's office may not understand the sometimes confusing "can of worms" regarding values.

There are many examples of appraisers in litigation scenarios legitimately differing substantially in the valuation of a property. The reasons may be a difference in a legal opinion, jurisdictional exception or in highest and best use. Sometimes the written law and/or precedent for assessment cases sets guidelines that differ from an appraisal on the same property whose intended use may be for mortgage financing. Thus, for purely investment properties the "Income Approach" is usually the approach of choice by the courts. In many cases the courts deem the "Sales Comparison Approach" and "Cost Approach" not necessary. For other intended users and uses the "Sales Comparison" and "Cost Approach" has much more importance.

Highest and best use also can be critical. As an example, for property assessment purposes the property generally has to be appraised in its current use. So if a property is being used as a single-family house in a commercial zone it's possible that the property would have to be appraised as a single-family residence without considering that the highest and best use may be to demolish/or rehab the house in order to attain highest and best use of the property as a commercial property. In assessment cases there is a premise that the fee simple interest of the property is applicable with few exceptions. A common example of this over the past number of decades is where high profile pharmacies are constructed on a "build-to-suit" basis. The property is then set up on a long-term triple net lease which attracts an investor who will buy the property based upon the long-term lease and credit of the tenant. Many of these leases are above market. Therefore, the rent and subsequent value are higher than the fee simple market values. As an example, I appraised a pharmacy highlighted by a build-to-suit, long-term lease which was near \$30 per s/f. After a few years, the pharmacy decided to vacate that location and subleased the space at \$8.00 per s/f which reflected the fee simple market. So in this example, the leased fee interest value for the remaining term of the lease produced a much higher value than the fee simple interest without the lease. I've also observed in some assessment cases that for a new property actual costs may be discounted and the sale price or mortgage amount may not be that pertinent to the courts.

Insurable value much of the time can be substantially different than market value especially if the broad evidence rule does not apply. There are different guidelines of insurable value. Most are connected to replacement cost which in many cases are much higher than market value because market depreciation/obsolescence is not fully accounted for in insurable value. Value in use has some similarities to insurable value. Value in use is specific to the user especially in cases of a "build-to-suit" properties. In New York State, a condominium project usually has a higher value if the fee simple interest is appraised for most cases except for assessment purposes. Under a special provision in the New York State law, a condominium project must be assessed as if it is a rental

apartment project. Thus, the assessed value is generally less than its market value as a condominium project. Life estate is generally substantially less than market value because the beneficiary generally can live rent free until their death. The degree of the difference is based upon actuarial tables. The younger the life estate beneficiary is, the lower the value is in relationship to market value without the life estate.

In summary, real estate valuation can be a real “can of worms.”

John Rynne, MAI, SRA, is president and owner of Rynne, Murphy & Associates, Inc., Rochester, N.Y.

New York Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540